IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 1535 of 2005
To
FIRST APPEAL No. 1547 of 2005
With
FIRST APPEAL No. 2514 of 2005
To
FIRST APPEAL No. 2518 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG
HONOURABLE MR.JUSTICE K.M.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SPL.LAQ OFFICER & 1 - Appellant(s)

Versus

PARVATIBEN WD/O JESANGBHAI CHHOTABHAI PATEL & 1 - Defendant(s)

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Appearance :
MR ARUN D OZA GOVERNMENT PLEADER for Appellant
MR TJ PATEL for Respondents
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CORAM : HONOURABLE MR.JUSTICE R.S.GARG
and
HONOURABLE MR.JUSTICE K.M.MEHTA

Date : 19/09/2005

COMMON ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE R.S.GARG)

1. Rule. Mr. T.J. Patel, learned counsel waives service of Rule on behalf of the respondents. With the consent of the parties, these appeals are finally heard.

2. Special Land Acquisition Officer/Government of Gujarat being aggrieved by the judgment and award dated 6.5.2004 made in Land Reference Case No. 639 of 1992 to 651 of 1992 (main case no. 629/92) have filed these appeals, submitting inter alia, that the Reference Court was absolutely unjustified in relying upon the judgment/award which was made in relation to village Kukas. It is submitted that the learned Reference Court has heavily relied upon the award made in the matter of lands of village Kukas, which, in its turn was relying upon an award made in relation to the lands of Achisara. It is submitted that Achisara lands were acquired in the year 1995 and as such, the said acquisition and the price prevailing in the year 1995 or subsequent thereto could not form the basis for deciding the compensation in relation to the land which were acquired in the year 1988. It is also submitted that the compensation awarded by the learned Reference Court in relation to the lands of Kukas village were set aside by a Division Bench of this Court in First appeal No.1020 of 2005 to First

Appeal No. 1041 of 2005, decided on 5.5.2005, therefore, the very foundation on which the learned court below has awarded the compensation has become nonest. It is also submitted that if this Court on an earlier occasion has observed that 1995 acquisition cannot be relied upon for 1988 acquisition and earlier judgment which relied upon 1995 acquisition has been set aside, then, this judgment should also go.

3. Though learned counsel for the respondents in each case vehemently argued that the facts of the cases were different, acquisition of 1988 must be decided on the strength of the evidence available on the record and the matters need not be remanded back. It is not in dispute before us that Achisara lands were acquired in the year 1995, while lands of village Kukas were acquired somewhere in December, 1986/13.9.87. The Reference Court, while awarding compensation to the land holders of Kukas village, relied upon the award made in the matter of lands of Achisara village, while Division Bench of this Court by its above-referred judgment held that 1995 acquisition and price fixation could not form the basis for awarding compensation in relation to the lands which were acquired somewhere in the year 1987 or so.

4. It is not in dispute before us that the award made by the Reference Court in relation to the lands of village Kusas has been relied upon by the Reference Court in the present matters which are in relation to Simli lands. If the award made in relation to Kukas lands has already been set aside by a Division Bench of this Court, then, the very foundation for awarding compensation in the present matters has vanished away. True it is that the matters are of 1988, but the moment this Court finds that the award made by the Reference Court is based on a foundation which is yet to be founded, then, the award cannot be upheld. We allow the appeals and set aside all the awards. The matters are remanded back to the trial court with a direction to give an opportunity of hearing to the parties and redecide the matters in accordance with law after taking into consideration the basic requirement for award of the compensation. As the acquisitions are of 1988, we direct the learned Reference Court to dispose of the matters finally after giving due opportunity of hearing and leading oral and documentary evidence to the parties within a period of six months from the date of appearance of the parties. The parties shall appear before the

learned Reference Court on 3rd October, 2005. Direct service is permitted. Let a copy of this order be sent to the learned Reference Court enabling it to know as to what it is required to do. Decrees in accordance with this remand order be framed. All the appeals are allowed. There shall be no order as to costs.

[R.S. GARG, J.]

[K.M. MEHTA, J.]

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